CENTRAL INTELLIGENCE AGENCY
Office of Legislative Counsel
Washington, D. C. 20505
Telephone [redacted]

4 February 1976

STAT

TO: Mr. Guy McConnell
Senate Appropriations Defense Subcommittee
1243 Dirksen Senate Office Building

Thought you would be interested in the material which relates to Rowan's news piece yesterday suggesting that the Agency was suppressing a legal study that finds, contrary to our public assessments, that there is no legal basis for covert action.

The legal study referred to by Rowan actually was prepared on a contract basis for IC Staff. It does not represent the Agency's viewpoint on the matter which has been set forth on the public record by Mitch Rogovin. Rogovin's statement is also included.

STAT

[redacted]
Deputy Legislative Counsel

FORM 6-68 1533 OBSOLETE PREVIOUS EDITIONS (40)

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DRAFT

4 February 1976

Mr. A. Searle Field
Staff Director
Select Committee on Intelligence
House of Representatives
Washington, D. C. 20515

Dear Mr. Field:

I have been informed that you have requested a copy of an unclassified paper entitled "Constitutional and Statutory Authority to Conduct Foreign Intelligence Activities." That paper is enclosed. This is to advise you that this paper was prepared by a lawyer and three student lawyers, all of whom were under contract to the Intelligence Community Staff. The paper was not prepared under my supervision and has no official sanction as legal advice to the Director by the General Counsel.

I also enclose for your information Mitchell Rogovin's memorandum of law dated 24 October 1975 which I understand you already have a copy. Additionally, I understand that you have a copy of another unclassified paper on the general subject dated February 1975, entitled "The Use of Classical Espionage, Electronic Surveillance and Covert Action Under International Law and Pursuant to the Commander-in-Chief and Foreign Affairs Powers of the President," which was prepared under the supervision of this Office. In any event I am enclosing a copy for your convenience.

Sincerely,

John S. Warner
General Counsel

Enclosures

Statement of

Mitchell Rogovin

before

The House Select Committee on

Intelligence

December 9, 1975

October 24, 1975

Re: The Constitutional, Statutory and Legal Basis for Covert Action

By means of explicit, formal instructions to the Director of Central Intelligence, the President and the National Security Council have directed that the Central Intelligence Agency assume responsibility for planning and conducting "covert action" in support of this country's foreign policy objectives. The legal authority for the delegation of this responsibility to the CIA derives from three fundamental sources, each of which, in itself, constitutes a sufficient legal basis for the delegation. The three fundamental sources are: (1) the inherent constitutional power of the President with respect to the conduct of foreign affairs; (2) the National Security Act of 1947; and, (3) the ratification, by Congress, of the CIA's authority to plan and conduct covert action.

The major portion of this memorandum is devoted to an analysis of these fundamental legal sources. Before proceeding with this analysis, however, it is useful to set forth a description of the kinds of activities which are comprehended by the term "covert action."

I. COVERT ACTION DEFINED

In general terms covert action means any clandestine activity designed to influence foreign governments, events, organizations or persons in support of United States foreign policy, conducted in such manner that the involvement of the United States Government is not apparent.

There are four general categories of covert action:

(1) Covert Political Action or operations designed to exercise influence on political situations in foreign countries; this could involve funding a political party or other group, or the use of an agent in a high government position to influence his government's domestic or foreign policy in a manner beneficial to the United States;

(2) Covert Propaganda or the covert use of foreign media assets including newspapers, magazines, radio, television, etc., to disseminate information supporting United States foreign policy or attack the policies and actions of foreign adversaries;

(3) Intelligence deception operations involving the calculated feeding of information to a foreign government or intelligence service for the purpose of influencing them to act or react in a manner favorable to our purpose; and

(4) Covert paramilitary action, the provision of covert military assistance and advice to foreign conventional and unconventional military forces or organizations.

II. FUNDAMENTAL SOURCES OF LEGAL AUTHORITY FOR CIA TO ENGAGE IN COVERT ACTION

As indicated above, the legal authority for the delegation of covert action responsibility to the CIA by the President and the National Security Council derives from three fundamental sources: (1) the inherent constitutional power of the President with respect to the conduct of foreign affairs; (2) the National Security Act of 1947; and, (3) the ratification, by Congress, of the CIA's authority to plan and conduct covert action. Each of these fundamental sources is discussed separately below.

A. INHERENT CONSTITUTIONAL POWER OF THE PRESIDENT WITH RESPECT TO FOREIGN AFFAIRS

The Supreme Court, the Congress, and the framers of the Constitution itself, have all recognized that the President possesses broad powers with respect to the conduct of foreign affairs. No less a constitutional authority than John Marshall, in an address to the House of Representatives, declared:

> "The President is sole organ of the nation in its external relations, and its sole representative with foreign nations."*/

The United States Senate, at an early date in its history, acknowledged the supremacy of the President with respect to foreign affairs, and recognized that he has broad powers in that area. In 1816, the Senate Foreign Relations Committee issued a report which concluded:

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*/ 10 Annals of Congress 613 (1800), reprinted in 5 Wheat. Appendix note 1, at 26 (U.S. 1820).

> "The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how and upon what subjects negotiation may be urged with the greatest prospect of success." */

Each of these statements was cited approvingly by the Supreme Court in United States v. Curtiss-Wright Export Corp., 299 U.S. 311 (1936). In that case, the Court upheld the power of the President to proclaim it unlawful for United States citizens to supply arms to any of the belligerents in the Chaco War in South America. Although the Court could have rested its opinion solely on the grounds that the proclamation was issued pursuant to a Joint Resolution of Congress, it cited the statements of Marshall and the Senate Foreign Relations Committee excerpted above and spoke at length of the inherent constitutional powers of the President with respect to foreign affairs. Specifically, the court spoke of:

> "[T]he very delicate, plenary and exclusive power of the President as the sole organ of the Federal government in the field of international relations--a power which does not require as a basis for its exercise an act of Congress..." 299 U.S. at 320.

The Court has frequently reaffirmed the constitutional doctrine set forth in Curtiss-Wright that the President is supreme in the area of foreign affairs and that his powers in that area are "plenary." For example, in United States v. Pink, 315 U.S. 203 (1942), a case in which the Court upheld the power of the President to recognize

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*/ 8 U.S. Sen. Reports, Comm. on Foreign Relations, p. 24.

foreign governments and to conclude executive agreements with them which have the force of domestic law, the Court repeated that "the President...is the 'sole organ of the Federal government in the field of international relations.'" 315 U.S. at 230. Then the Court added:

> "Effectiveness in handling the delicate problems of foreign relations requires no less. Unless such a power exists, the power of recognition might be thwarted or seriously diluted. No such obstacle can be placed in the way of rehabilitation of relations between this country and another nation, unless the historic conception of the powers and responsibilities of the President in the conduct of foreign affairs...is to be drastically revised." Id.

Pursuant to this "historic conception of the powers and responsibilities of the President in the conduct of foreign affairs," the Court has made it clear that the President may: proclaim it unlawful for United States citizens to supply arms to foreign belligerents, Curtiss-Wright, supra; recognize foreign governments and conclude binding executive agreements with them, Pink, supra; use military force to protect United States citizens and property abroad, In Re Neagle, 135 U.S. 1, 64 (1890); and repel an armed attack by meeting "force with force," Prize Cases, 2 Black 635, 668 (1862).

The Court has never considered the precise question of whether the President may direct an agency of government to perform covert action in foreign countries. However, in view of the Court's recognition of the broad powers of the President with respect to the conduct of foreign affairs, and in ivew of the overwhelming historical precedents, it is clear that the President does have this power.

The historical precedents are every bit as compelling as the strong language used by the Supreme Court. Chief among these precedents is the longstanding practice whereby Presidents, acting on their own authority, have dispatched troops to foreign countries and authorized the use of military force short of war. This practice was originated by Thomas Jefferson when he, on his own authority, sent the Navy to combat the Barbary pirates in an effort to protect American shipping. By 1970 it was estimated that Presidents, on their own authority, had asserted the right to send troops abroad in "more than 125" instances differing widely in purpose and magnitude.*/ Although the Constitution vests Congress with the power to "declare" war (Article 1, Section 8, Clause 11), Presidents have, throughout history, insisted on and exercised their right to use force short of war. President Taft, who later served as Chief Justice of the Supreme Court, wrote:

> "The President is the Commander-in-Chief of the army and navy, and the militia when called into the service of the United States. Under this, he can order the army and navy anywhere he wills, if the appropriations furnish the means of transportation."**/

*/Background Information on the Use of United States Armed Forces in Foreign Countries, 1970 Revision by the Foreign Affairs Division, Legislative Reference Service, Library of Congress, for the Sub-Committee on National Security Policy and Scientific Development of the House Committee on Foreign Affairs, 91st Cong. 2d Sess. 15 et seq. and Appendices I and II, (hereafter, "Background Information.")

**/Taft, W. H., Our Chief Magistrate and His Powers, pp. 94-95 (1916).

Recent examples of presidential use of force short of war include: President Truman's peacetime stationing of troops in Europe; President Eisenhower's sending of Marines to Lebanon in 1958 to prevent foreign intervention in the affairs of that country; President Kennedy's imposition of a naval "quarantine" on Cuba during the 1962 missile crisis, and his sending of planes to the Congo to evacuate civilians in 1960; President Johnson's sending of troops to the Dominican Republic in 1965 to prevent formation of a hostile government;*/ and, President Ford's use of force against Cambodia in 1975 to obtain the release of American seamen held by Khmer Rouge troops.

Congress has formally acknowledged that the President has inherent constitutional authority to use military force short of war. This acknowledgment is implicit in the War Powers Resolution, which became effective on November 7, 1973.**/ In Section 3 of that Resolution, it is provided that:

> "The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations."

Moreover, the Resolution specifically states, in Section 8(d)(1), that it is not intended in any way to "alter the constitutional authority" of the President:

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*/Background Information, supra.

**/Public Law 93-148, 87 Stat. 555.

"Nothing in this joint resolution--

"(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties..."

If the President has the power to dispatch troops to foreign countries and to use military force short of war--and the foregoing discussion clearly demonstrates that he does--then it would logically follow that he has the power to send civilian personnel to foreign countries to engage in covert action, since such action is rarely, if ever, as drastic as the use of military force. In fact, the historical precedents in support of the President's power to conduct covert action in foreign countries are every bit as clear as those in support of his power to use military force.

Long before the CIA was established, Presidents, acting on their own authority, directed executive agents and executive agencies to perform what has come to be known as covert action. Beginning with George Washington, almost every President has appointed "special agents" to engage in certain activities with, or against, foreign countries; although the activities conducted by these executive agents have included such overt assignments as negotiating treaties and conferring with wartime allies, they have frequently included covert action as well. In the first century of the nation's existence alone, more than 400 such agents were appointed by the President.*/

*/S. Doc. No. 231, 56th Cong., 2d Sess, part 8, at 337-62 (1901); H.R. Doc. No. 387, 66th Cong., 1st Sess, part 2, at 5 (1919).

Early examples of covert action performed by these agents are legion. The following three are typical: (1) in 1843 President Tyler secretly dispatched an agent to Great Britain to meet privately with individual government and opposition leaders and to attempt to influence public opinion with respect to matters affecting the two countries, without ever disclosing that he was a representative of the United States Government; (2) in 1845, when President Polk feared that Mexico was on the verge of ceding California to Great Britain, he secretly dispatched an agent to California for the purpose of "defeating any attempt which may be made by foreign governments to acquire a control over that country;" (3) in 1869, when the United States had territorial designs on central and western CAnada, President Grant sent an agent to that area to foment sentiment for separation from Canada and union with the United States.*/

These examples show that the practice of appointment of special agents by the President for the purpose of conducting covert action in foreign countries is deeply-rooted in our national history. The practice is so deeply-rooted that historians have acknowledged the existance of a broad presidential discretion with respect to appointment of such agents and assignment of functions to them. According to Henry M. Wriston, for example:

*/Wriston, Henry Merritt, Executive Agents in American Foreign Relations, Baltimore, Md., Johns Hopkins Press (1929), reprinted Glouster, Mass, Peter Smith (1967).

> "All [illegible] available to the President in his conduct of foreign relations, none is more flexible than the use of personal representatives. He is free to employ officials of the government or private citizens. He may give them such rank and title as seem appropriate to the tasks....He may send his agents to any place on earth that he thinks desirable and give them instructions either by word of mouth, or in writing, or through the Department of State, or in any other manner that seems to him fitted to the occasion...
>
> "Their missions may be secret, no one ever being informed of them....The President may meet their expenses and pay them such sums as he regards as reasonable. In this matter there is no check upon him except the availability of funds which has never proved an insoluble problem. In short, he is as nearly completely untrammeled as in any phase of his executive authority." */ (Emphasis added.)

Individual agents, appointed by the President, were the exclusive means by which covert action was conducted prior to World War II. During the war, the President created the Office of Strategic Services, and charged it with responsibility for secret subversive operations against the enemy, as well as general intelligence activities; the OSS thus became the first governmental agency to be assigned the task of planning and conducting covert action. The OSS exercised this task until it was disbanded in September 1945. Then, in January 1946, President Truman, by Executive Order, established the Central Intelligence Group.**/ Although the CIG was primarily a centralized intelligence organization, it was also assigned the function of conducting covert action.

*/38 Foreign Affairs 219 (1960).

**/ Executive Order 9690, January 26, 1946, 11 Fed. Reg. 1337, 1339 (February 5, 1946).

What these historical precedents show is that, beginning long before the CIA was established, Presidents exercised their independent power to direct executive agents and executive agencies to perform covert action in foreign countries. Consequently, when the CIA was established in 1947, and when, shortly thereafter, it was delegated the responsibility for covert action, there was no attempt by the President to assert or exercise any new or theretofore unrecognized executive authority; he was merely delegating to the CIA various executive functions which were previously assigned to ad hoc special agents and other executive agencies.

In sum, the decisions of the Supreme Court, the actions of Congress, and the constitutional precedents developed by historical example clearly establish that the President has broad, inherent powers with respect to foreign affairs, and that these powers include the authority to assign an executive agency, such as the CIA, the responsibility for planning and conducting covert action in support of this country's foreign policy objectives.

B. NATIONAL SECURITY ACT OF 1947

The National Security Act of 1947 provided for the establishment of the CIA. However, the idea for a central intelligence organization was actually conceived three years earlier. In 1944, Colonel (later Major General) William J. Donovan, head of the wartime Office of Strategic Services, prepared a plan for President Roosevelt which called for the establishment of a centralized intelligence service. Donovan's plan envisioned an agency similar to his own OSS, which would procure intelligence by overt and covert means and which would be responsible for "secret activities" such as "clandestine subversive operations."

The OSS itself, as indicated above, was disbanded at the close of World War II in September 1945. However, Donovan's plan, as developed and amended by the Joint Chiefs of Staff, reached fruition on January 22, 1946; on that date, President Truman, by Executive Order, established the Central Intelligence Group (CIG).*/ The CIA thus became the first peacetime central organization in American history devoted to intelligence matters. Heading the CIG was a Director of Central Intelligence, whose duties were to:

> "(a) Accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national intelligence policy . . .
>
> "(b) Plan for the coordination of such of the activities of the intelligence agencies of /other/ departments as relate to the national security and recommend

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*/ Executive Order 9690, supra.

to the National Intelligence Authority [composed of the Secretaries of State, War and Navy, and a personal representative of the President] the establishment of such overall policies and objectives as will assure the most effective accomplishment of the national intelligence mission.

"(c) Perform, for the benefit of said intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished centrally.

"(d) Perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct."** (Emphasis added.)

The National Security Act of 1947 called for the CIA to have the same powers and responsibilities as were accorded the CIG under the 1946 Presidential Directive. Accordingly, when the House Committee on Expenditures in the Executive Departments held hearings on the 1947 Act, it paid special attention to the broad authority delegated to the CIG by subsection (d).*/ During these hearings, for example, Representative Clarence Brown questioned Lt. Gen. Hoyt S. Vandenberg, Director of Central Intelligence, about the authority which subparagraph (d) conveyed:

*/ Id. at 1337.

**/Hearings before the House Committee on Expenditures in the Executive Departments, June 27, 1947, Addendum No. 1 to Volume 1 (hereafter "Hearings").

REP. BROWN: "[T]his other section (i.e., subparagraph (d)) was so broad that you could do about anything that you decided was either advantageous or beneficial, in your mind?"

LT. GEN. VANDENBERG: "Yes, sir."

REP. BROWN: "In other words, if you decided you wanted to go into direct activities of any nature, almost, why, that could be done?"

LT. GEN. VANDENBERG: "Within the foreign intelligence field, if it was agreed upon by all of the three agencies concerned [i.e., State, War and Navy, the three agencies represented on the NIA]."*

A subsequent witness, Peter Visher, the draftsman of the Presidential Directive establishing the CIG, recommended to the committee that it pass the Act without authority for the CIA to perform any "other functions related to intelligence affecting the national security." He called this provision a "loophole" because it enabled the President to direct the CIG to perform almost any operation.** Various members of the committee discussed the provision with the witness***

It is significant, then that when the bill was reported out, and when it was passed, it authorized the CIA to:

"perform such other functions and duties related to intelligence affecting the national security as the National Security Council (which replaced the NIA) may from time to time direct." (Section 102(d)(5)).

In other words, the committee, with full knowledge of the broad implications of subparagraph (d) of the 1946 Presidential Directive, conferred the identical powers and responsibilities on the CIA. This legislative history indicates that the committee, by including Section 102(d)(5) in the final bill, intended that the CIA have the authority, subject to directions from the National Security Council, to conduct a broad range of direct operational assignments.

*Hearings, supra, p.11.
**/Id. p. 83
***/Id. pp. 78-108.

C. CONGRESSIONAL RATIFICATION OF CIA AUTHORITY TO PLAN AND CONDUCT COVERT ACTION

Throughout the 28-year history of the CIA, the Agency has reported its covert action programs to the appropriate members of its oversight subcommittees in both the House and Senate. Moreover, Congress, through the mechanisms it has established for funding the Agency, has continually appropriated funds to the Agency for these activities.*

The Justice Department, in its 1962 memorandum, discussed supra, provided the following description of the history of CIA reporting of its covert action programs to Congress, and Congressional appropriation of funds for such programs:

> "Congress has continued over the years since 1947 to appropriate funds for the conduct of such covert activities. We understand that the existence of such covert activities has been reported on a number of occasions to the leadership of both houses, and to members of the subcommittees of the Armed Services and Appropriations Committees of both houses. It can be said that Congress as a whole knows that money is appropriated to CIA and knows generally that a portion of it goes for clandestine activities, although knowledge of specific activities is restricted to the group specified above and occasional other members of Congress briefed for specific purposes. In effect, therefore, CIA has for many years had general funds approval from the Congress to carry on covert cold-war activities..."*/

*/The history of CIA reporting of covert action programs and Congressional appropriation dates bact to 1948. In April 1948, when the House Armed Services Committee was considering the CIA Act (ultimately adopted in 1949), Director of Central Intelligence Hillenkoetter told the committee that the Act was needed to enable the Agency to, inter alia, do research on and purchase explosives, utilize and supply underground resistance movements in overrun countries, purchase printing presses for the use of agents, and do research for psychological warfare purposes. Passage of the Act clearly reflects Congress' determination that the Agency be able to conduct activities, such as covert action, similar to those conducted by the OSS; for example, the permanent appropriations language in the CIA Act was modelled after the appropriations language for the OSS because of its flexibility and its provision for confidentiality of appropriations for secret operations.

**/DOJ Memorandum, pp.12-13.

The law is clear that, under these circumstances, Congress has effectively ratified the authority of the CIA to plan and conduct covert action under the direction of the President and the National Security Council. The leading case on this point is Brooks v. Dewar, 313 U.S. 354 (1941). In that case, a 1934 Act of Congress authorized the establishment of livestock grazing districts on certain federally-owned land, and charged the Secretary of the Interior with responsibility for administering and maintaining these districts; although the powers conferred on the Secretary were broad, the Act did not explicitly authorize him to require persons wishing to utilize the land to purchase licenses. Nevertheless, the Secretary promulgated regulations which imposed a license requirement, and sought to bar respondents who had not purchased a license, from utilizing a particular grazing district.

In the Supreme Court, the Secretary argued that, even though the 1934 Act did not explicitly authorize him to require users of federal grazing lands to purchase licenses, his exercise of this authority was lawful because Congress, by its own actions, had ratified it. The Secretary aruged that, on several occasions, he fully informed the appropriate Congressional committees that he had imposed a license requirement and that, in light of this information, Congress continually appropriated funds for the operation of the grazing district program; this, he contended, amounted to a ratification of his authority to institute the license requirement.

The Supreme Court agreed that Congress, by continuing to appropriate funds with knowledge of the Secretary's actions, ratified those actions. The Court explained:

> "The information in the possession of Congress was plentiful and from various sources. It knew from the annual reports of the Secretary of the Interior that a system of temporary liscensing was in force. The same information was furnished the Appropriations Committee at its hearings. Not only was it disclosed by the annual report of the Department that no permits were issued in 1936, 1937 and 1938, and that permits were issued in only one district in 1939, but it was also disclosed in the hearings that uniform fees were being charged and collected for the issue of temporary licenses. And members from the floor informed the Congress that the temporary licensing system was in force and that as much as $1,000,000 had been or would be collected in fees for such licenses. The repeated appropriations of the proceeds of the fees thus covered and to be covered into the Treasury, not only confirms the departmental construction of the statute, but constitutes a ratification of the action of the Secretary as the agent of Congress in the administration of the act." (Footnotes omitted.) 313 U.S. at 360-361.

The Brooks case requires the conclusion that Congress has ratified the CIA's authority to plan and conduct covert action. Relying on Brooks, the Justice Department reached precisely that conclusion:

> "It is well-established that appropriations for administrative action of which Congress has been informed amount to a ratification of or acquiescence in such action. Brooks v. Dewar, 313 U.S. 354, 361; Fleming v. Mohawk Co., 331 U.S. 111, 116; see also Ivanhoe Irrig Dist. v. McCracken, 357 U.S. 275, 293-294; Power Reactor Co. v. Electricians, 367 U.S. 396, 409. Since the circumstances effectively prevent the Congress from making an express and detailed appropriation for the activities of the CIA, the general knowledge of the Congress, and specific knowledge of responsible committee members, outlined above, are sufficient to render this principle applicable."*/ (Footnote omitted).

Recent legislative developments provide further support for the Justice Department's conclusion that Congress has ratified the CIA's authority to plan and conduct covert action. In September and October 1974, attempts were made in both the House and Senate to limit the Agency's power to conduct covert action; these attempts were soundly defeated. In the House, the attempt took the form of a proposal by Representative Holtzman for a joint resolution amending the Supplemental Defense Appropriations Act as follows:

> "After September 30, 1974, none of the funds appropriated under this joint resolution may be expended by the Central Intelligence Agency for the purpose of undermining or destabilizing the government of any foreign country."

*/ DOJ Memorandum, p. 13.

The proposal was defeated by the House on September 30, 1974, by a vote of 291-108.

In the Senate, Senator Abourezk attempted to amend the Foreign Assistance Act of 1961 so that it would state:

> "(a) No funds made available under this or any other law may be used by any agency of the United States Government to carry out any activity within any foreign country which violates, or is intended to encourage the violation of, the laws of the United States or of such country.
>
> "(b) The provisions of this section shall not be construed to prohibit the use of such funds to carry out any activity necessary to the security of the United States which is intended solely to gather intelligence information...."

This amendment was defeated by the Senate on October 2, 1974, by a vote of 68-17.

However, the following amendment to the Foreign Assistance Act of 1961 was enacted:

> "Sec. 663. Limitation on Intelligence Activities.
>
> "(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

This provision prevents the CIA from engaging in any covert action unless and until the President makes a finding that such action is important to the national security. It also requires the President to report on the description and scope of the action "in a timely fashion" to the appropriate Congressional committees. The provision clearly implies that the CIA is authorized to plan and conduct covert action. The Association of the Bar of the City of New York has concluded, in fact, that the provision serves as a "clear Congressional authorization for the CIA to conduct covert activities."*/

In sum, the history of Congressional action since 1947 makes it clear that Congress has both acknowledged and ratified the authority of the CIA to plan and conduct covert action.

III. CONCLUSIONS

There is ample legal authority for the Central Intelligence Agency to plan and conduct covert action in foreign countries. First, it is within the inherent constitutional authority of the President with respect to foreign affairs to delegate to an executive agency, such as the CIA, the responsibility for planning and conducting such activities; in fact, by means of various National Security Council Directives, and National Security Decision Memorandum 40 (issued by the President himself), he has lawfully delegated this responsibility to the CIA.

*/ The Central Intelligence Agency: Oversight and Accountability, by the Committee on Civil Rights and the Committee on International Human Relations of the Association of the Bar of the City of New York (1975), p. 15.

Second, the National Security Act of 1947 authorizes the CIA, at the direction of the National Security Council, to engage in covert action in foreign countries. The legislative history of this statute, particularly in the House of Representatives, gives support to this conclusion. Third, the 28-year history of Congressional action with respect to the CIA clearly establishes that Congress has ratified the authority of the Agency to plan and conduct covert action.

SPECIAL COUNSEL TO THE DCI

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STAT 17. [redacted] LIAISON I returned a call from Bill Miles, on the staff of Representative William V. Alexander (D., Ark.), regarding employment possibilities for a constituent. I told him that prospects for employment given the constituent's background were not bright but I would see if we could have the constituent contacted by an Agency recruiter.

STAT 18. [redacted] LEGISLATION Called Tom McMurray, on Representative Robert Michel's (R., Ill.) staff, who on Friday, 13 February, had asked me whether Michel could introduce the sources and methods legislation. I told him that he should hold off and see what the President's package is like later this week.

STAT 19. [redacted] LEGISLATION Called Mike Hastings, in Representative William Cohen's (R., Maine) office. He had asked me to give him feedback on H. J. Res. 806, the joint oversight committee bill introduced by Cohen and Representative John Rhodes (R., Ariz.). I discussed some oversight issues with him.

STAT 20. [redacted] LIAISON Received a call from John Childers, on the Senate Government Operations Committee staff, regarding the Agency's position on several issues concerning congressional oversight. Childers was preparing for a meeting with other staff members on the oversight issue, and I gave him our views on several key points. Later 25X1 in the day [redacted] and I met with Childers and were told the results of the staff meeting.

STAT 21. [redacted] ADMINISTRATIVE - DELIVERIES Delivered to Dan Spiegel, Legislative Assistant to Senator Hubert Humphrey (D., Minn.), two blind memoranda opposing amendments to S. 2662, the International Security Assistance Act of 1976.

STAT 22. [redacted] LIAISON Called Max Parrish, Legislative Assistant to Senator John McClellan (D., Ark.). Parrish indicated he and Gary Sellers, of the Senate Appropriations Committee staff, would be handling Senator McClellan's Government Operations Committee work on congressional oversight. Parrish indicated he believed the congressional investigations had done a great deal of damage to the Agency, and he would be glad to receive our inputs on the oversight issue.

STAT [redacted]